

REMARKS/ARGUMENTS

Claims 1 to 35 remain in this application. Claims 1 and 27 are independent; and the remaining claims are dependent, either directly or through one another, upon these two independent claims. In the present Office Action, Claims 13,14,19 to 22, 26 and 34 were indicated as being allowable if rewritten in independent form including all of the limitations of the base claim in any intervening claims. Applicant holds in abeyance the request for the writing of these claims in independent form, since applicant believes all of the claims presently appearing in this application are allowable.

Claims 1 to 4 and 23 to 28 (sic excluding Claim 26) have been rejected under 35 U.S.C. §102(b) as being anticipated by the United States patent to Jordan No. 3,433,376. Claims 1 to 12, 15 to 18, 27 to 33 and 35 have been rejected under 35 U.S.C. §103(a) as unpatentable over the United States patent to Link No. 3,643,827 in view of the patent to Jordan.

Before entering into a discussion of applicant's reasons for this present request for reconsideration and applicant's traversal of the rejections of the claims being made by the Examiner, a brief discussion of the disclosures of the Jordan and Link patents is

1 considered in order. Both of these patents are directed to clamp
2 attachments for fork lift vehicles in the class of industrial lift
3 trucks employing clamping plates. This is the field to which the
4 claims of the present invention are directed.

5 The Jordan patent is directed to a combination facing for the
6 clamping plates of industrial lift trucks. The clamp plates of
7 Jordan each comprise large, rectangular plates 40 which are faced
8 on the clamping surface with a thicker, softer clamping material 48
9 on the upper portions of the clamping plate 40, and with a thinner,
10 harder strip of material 44 along the bottom of the clamping plate.
11 The facing materials in Jordan are permanently attached (bonded) to
12 the clamping plates (40). There is no provision for removing any
13 auxiliary portions to remove or replace either of these two
14 different materials.
15

16 The problem which is solved by the device of Jordan is
17 summarized in the "Summary of the Invention" of the Jordan patent.
18 Here, it is stated that a principal object of the invention is to
19 distribute in a desirable manner over the sides of a load, a
20 clamping force, by providing differing materials secured to the
21 clamping surfaces in a predetermined manner. There is no
22 discussion anywhere in Jordan of the desirability of providing a
23
24
25
26

1 removable auxiliary plate along the bottom edge of the main
2 clamping plates.

3 In Column 3, Lines 9 through 17 and 30 to 34 of Jordan,
4 specific mention of the structure for applying the strips 44 to the
5 inner surface of the platens is made. It is stated that the strips
6 44 are bonded to thin strips of metal 46, which in turn are bonded
7 to the inner surface of each platen (plates 40) to extend
8 longitudinally along the bottom corner portions of each platen. It
9 then is stated that the entire remaining portion of the surface of
10 each platen preferably has bonded to it a sheet of relatively soft
11 rubber facing 48. Finally, in Column 3, Lines 30 to 34 it is
12 stated that, "It is desirable to secure the facing materials
13 (apparently, materials 44 and 48) to the platens by means of
14 countersunk bolts (not shown) in addition to securing the same by
15 bonding. It is quite clear that no provision is made in Jordan for
16 removably attaching the strips 44/46 to the platen 40. These
17 strips are bonded, that is permanently, non-removably attached to
18 the plates or platens 40.

21 The function of the bonded materials on the faces of the
22 clamping plates is described in Column 3, Lines 50-70. As stated
23 in this portion of the disclosure of Jordan, the statement is made
24
25
26

1 that the thicker, softer material 48 (on the upper portions of the
2 clamping plates) first contacts the sides of the carton above the
3 bottom corner portions, and is actuated into full and compressed
4 frictional engagement with the carton at such time as frictional
5 engagement then is effected between the thinner harder strips 44
6 and the longitudinal bottom portions of the carton. It then is
7 stated that the use of single thickness facing material over the
8 entire surface of the plates, as provided prior to the Jordan
9 invention, tended to result in unequal distribution of clamping
10 force and facilitated a tendency of the carton to pivot or rotate
11 forwardly out of the clamp.
12

13 In summary, there is nothing whatsoever in Jordan for
14 providing a removable auxiliary plate along the bottom edge of the
15 clamping plates. The clamping plates 40 of Jordan are single,
16 rectangular plates with different cushion materials located along
17 the bottom edge and the remainder of each of the plates. The
18 strips 44 are are material strips which are thinner and harder than
19 the thicker, softer material 48 which is placed on the faces of the
20 remainder of the clamping plates.
21

22 The Link patent also is directed to clamping plates for a lift
23 truck mechanism. Column 3 of the Link patent describes the
24
25
26

1 structure of the clamping plate mechanism which is used. An
2 inverted L-shaped primary plate 78 with a tapered vertical forward
3 edge 83 constitutes the primary clamping member of the Link
4 mechanism. This clamping plate, as stated in Column 3, Lines 23 to
5 24 is of a relatively thin and flexible construction. This plate
6 has secured to the outer side (the surface which does not contact
7 the carton being lifted) a reinforcing plate 80, also of a
8 generally L-shaped inverted configuration. This structure is best
9 shown in Figures 2 and 3, with a partial cross-sectional view in
10 Figure 4. There is no yieldable frictional material on the
11 reinforcing plate 80. The only frictional material is on the inner
12 or facing surfaces of the plates 78.
13

14 Located within the inverted L-shaped configuration, toward the
15 rear of the apparatus, is a smaller fixed plate 70, to which the
16 plate 78 and its reinforcing plate 80 are connected with a torsion
17 bar to provide some articulation between the plates 78 and 70.
18 There is no auxiliary plate (fixed or removable) extending from
19 substantially front to back along the bottom edge of the clamping
20 plates 70/78 of Link. Once again, the reinforcing plate 80 does
21 not have any yieldable frictional surface on it; and the inverted
22 L-shaped primary clamping plates 78 have the inner or facing
23
24
25
26

1 surfaces covered from top to bottom, uniformly, with friction
2 material.

3 Independent Claim 1 and dependent Claims 2 through 4 and 23 to
4 25, along with independent Claim 27 and dependent Claim 28 have
5 been rejected under 35 U.S.C. §102(b) as anticipated by Jordan.
6 Both independent Claims 1 and 27 recite, among other elements, an
7 auxiliary plate removably attached to the main plate member. Both
8 of these claims recite the location and relative size and
9 relationship of the auxiliary plate to the yieldable frictional
10 material in differing language.

11 Applicant respectfully submits that for a claim to be rejected
12 for a lack of novelty under §102(b), the reference must disclose
13 every limitation recited in the rejected claim (or claims). As
14 stated in MPEP §2131: "A claim is anticipated only if each and
15 every element as set forth in the claim is found, either expressly
16 or inherently described, in a single prior art reference."
17 *Verdegaal Bros. v. Union Oil Co. of California*, 814 F2nd 628, 631,
18 2 USPQ 2nd 1051, 1053 (Fed. Cir. 1987) states: "The identical
19 invention must be shown in as complete detail as is contained in
20 the... claim." *Richardson v. Suzuki Motor Co.*, 868 F2nd 1226,
21 1236, 9 USPQ 2nd 1913, 1920 (Fed. Cir. 1989): "The elements must be
22 arranged as required by the claim...".
23
24
25
26

1 Applicant respectfully traverses the rejection of the above
2 mentioned claims under 35 U.S.C. §102(b) as anticipated by Jordan.
3 Even if the thin metal strip 46 of Jordan were somehow to be
4 construed as an auxiliary plate, where is there any teaching in
5 Jordan (directly or even remotely suggested) that such a plate is
6 removably attached to the main plate member? Applicant
7 respectfully submits that Column 3, Lines 31 to 34 do not support
8 such a finding. In fact, the countersunk bolts referred to in this
9 portion of the Jordan disclosure simply are mentioned as being
10 desirable in addition to securing the same by bonding. Reference
11 to the "same" in this portion refers back to the facings 48 and 44.
12 All of the facings in Jordan are bonded (i.e. permanently attached)
13 to the platen or clamping plates. For a rejection of anticipation
14 under 35 U.S.C. §102, everything in the claim must be absolutely
15 found in the reference. That is not true of Jordan. Consequently,
16 applicant respectfully requests withdrawal of the rejection of
17 Claims 1 to 4, 23 to 28, as anticipated by Jordan.

18
19
20 Claims 1 to 12, 15 to 18, 27 to 33 and 35 were rejected under
21 35 U.S.C. §103(a) as unpatentable over Link in view of Jordan.
22 Applicant respectfully submits that the discussion provided on Page
23 4 of the current Office Action concerning Link is incorrect.
24
25
26

1 Applicant respectfully submits that the summary given by applicant
2 above of the disclosure of the Link patent is correct. The
3 reinforcing plate 80 of Link does overlies the main plate member 78
4 (in part); but the location of this reinforcing plate, as readily
5 ascertained from an examination of Figure 3, is not as set forth by
6 either of the independent claims 1 and 27 in this application. The
7 yieldable friction material 140 in Link covers the inner facing
8 surface only of the main plate 78. The reinforcing plate 80 (not
9 called an auxiliary plate) is on the outside surface of the thinner
10 main plate 78; and it does not have any friction material on it.

11 The Examiner has stated that Link does not disclose the
12 auxiliary plate (called a reinforcing plate by Link) extending to
13 the front edge of the main plate 78; and this is correct. The
14 Examiner then states that Jordan discloses an additional thin strip
15 of metal 44 attached to a main plate to extend longitudinally of an
16 adjacent bottom corner portion of the main plate. The statement
17 further is made that Link (sic) discloses the reason for adding
18 this additional thin strip of metal (actually, the thin strip metal
19 is 46 and it is covered with material 44) along the bottom corners
20 of the main plate. Column 3, Lines 59-70 have been quoted by the
21 Examiner. The Examiner then states that it would have been obvious
22
23
24
25
26

1 to one of ordinary skill to extend the reinforcing plate of Link as
2 taught by Jordan to the forward corner of the main plate in order
3 to reduce wear on the bottom corner portions of the plate. How can
4 this be? The reinforcing plate 80 of Link is on the outside (not
5 the clamping side) of the main plate 78. Even if it were somehow
6 extended to the forward bottom corner of the main plate, it would
7 not reduce any wear on the bottom frictional coating on portions of
8 the plate 78. Where, absent applicant's own disclosure and
9 recitation of independent Claims 1 and 27, and dependent Claims 2
10 through 12, 15 to 18, 28 to 33 and 35, does the Examiner find any
11 support whatsoever for this reconstruction of Link and Jordan?
12

13 As specified in MPEP §2142, in order to properly combine
14 references under 35 U.S.C. §103: "The examiner must step backward
15 in time into the shoes worn by the 'hypothetical person of ordinary
16 skill in the art' when the invention was unknown and just before it
17 was made". To do this, the Examiner must put aside knowledge of an
18 applicant's own disclosure and refrain from using hindsight to
19 reach the legal conclusion based on facts gleaned from the prior
20 art.
21

22 Further as set forth in MPEP §2142, in order to establish a
23 prima facie case of obviousness under 35 U.S.C. §103, there must be
24
25
26

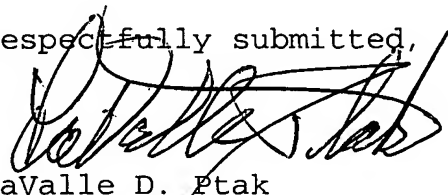
1 some suggestion or motivation, either in the references themselves
2 or in the knowledge generally available to one of ordinary skill in
3 the art, to combine the reference teachings. In addition, the
4 teaching or suggestion to make the claimed combination, and the
5 reasonable expectation of success, must both be found in the prior
6 art and not be based on applicant's own disclosure. Various cases
7 in support of this set forth in MPEP §2142; and for that reason,
8 those cases will not further be cited here.

10 In addition to the foregoing, MPEP §2143.01 clearly sets forth
11 that the mere fact that references can be combined or modified does
12 not render the resultant obvious, unless the prior art also
13 suggests the desirability of such a combination. Applicant
14 respectfully submits that this requirement clearly is absent in the
15 modification of Link and Jordan which has been made by the
16 Examiner. Where, absent applicant's own disclosure, does the
17 Examiner find anything in either Link or Jordan which suggests the
18 modification described on Page 5 of the Office Action? Even if
19 such a modification were made, where in either Jordan or Link is
20 the suggestion of the removably attached auxiliary plate? Such a
21 feature is totally absent from both Link and Jordan. Even if they
22 were somehow combined, the clamping plate assembly recited the
23
24
25
26

1 independent claims of the present application still would not
2 result. Applicant respectfully submits that the rejection of
3 claims 1 to 12, 15 to 18, 27 to 33 and 35, as unpatentable over a
4 combination of Link in view of Jordan under 35 U.S.C. §103(a) is
5 improper; and applicant respectfully requests withdrawal of this
6 rejection of independent Claims 1 and 27 and all of the dependent
7 claims which have been included in this rejection.
8

9 In view of the foregoing, applicant respectfully submits that
10 all of the claims in this application are in condition for
11 allowance, along with previously allowed Claims 13, 14, 19 to 22, 26
12 and 34. Consequently, withdrawal of the various rejections of
13 Claims 1 to 12, 15 to 18, 23 to 25, 27 to 33 and 35 is respectfully
14 requested; and allowance of all of the claims appearing in this
15 application is respectfully solicited.
16
17

18 Respectfully submitted,
19



20 LaValle D. Ptak
21 Registration No. 19,877
22 LAW OFFICES OF LAVALLE D. PTAK
23 28435 N. 42ND Street
24 Cave Creek, AZ 85331
25 Telephone: (480) 419-9019
26

23 Date: 12/8/05
24
25
26